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Calendar No. 1087

81ST CONGRESS, 1st Session | SENATE | REPORT No. 1075

RELATING TO DUAL EMPLOYMENTS COMPENSATION AND REPEALING INCONSISTENT STATUTES

SEPTEMBER 14 (legislative day, SEPTEMBER 3), 1949.—Ordered to be printed

Mr. HUMPHREY, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany S. 2351]

The Committee on Post Office and Civil Service, to whom was referred the bill (S. 2351), to simplify and consolidate the laws relating to the receipt of compensation from dual employments under the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass, as amended.

STATEMENT

The stated purpose of S. 2351 is to simplify and consolidate the laws relating to the receipt of compensation from dual employments under the United States. At present this subject is dealt with by various and unrelated statutes, as is demonstrated by section 5 of the bill which enumerates these statutes, with a brief description of each, and provides either for their repeal, amendment, or that they shall be unaffected.

Section 1 of the bill provides that, unless otherwise specifically authorized by law, any person receiving compensation from any office or position, appointive or elective, under the United States or any department or agency thereof, including Government-owned or controlled corporations, or under the government of the District of Columbia, shall not be eligible to receive compensation from any other such office or position except to such extent as will not cause the combined amounts actually received for any period of time to exceed the rate of $5,000 per annum. It is provided, however, that when the compensation of either office or position amounts to or exceeds the rate of $5,000 per annum such person shall be eligible to receive the compensation of either office or position, as he may elect.

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This section continues the policy of the present law, that when the total salary or annual compensation of two offices is below a certain figure, one person may hold both offices. (See sec. 2 of the act of July 31, 1894, as amended, 5 U. S. C. sec. 62; (1938) 39 Op. Atty. Gen. 197.) It has been said that the traditions and usages of Government recognize the policy and propriety of employing, when necessary, the same person at the same time in two distinct and not incompatible capacities. *Landrum* v. *U. S.* (1880) 16 C. Cl. 74. The proposal in section 1 of the bill, however, raises the salary or compensation ceiling from the present rate of $2,500 per annum to $5,000 per annum. Moreover, proposed section 1 does not, as does the present law previously referred to, forbid the holding of two offices to which compensation is attached except when the combined compensation is below a certain figure, but instead simply provides that when the compensation of either office or position amounts to or exceeds the rate of $5,000 per annum such person shall be eligible to receive the compensation of either office or position, as he may elect. Thus the proposed provision is limited strictly to the purpose of preventing dual compensation, not dual office holding. This purpose was said also to be the basic intent of the present law. (See *Pack* v. *U. S.* (1906) 41 C. Cl. 414.)

Section 2 of the bill provides that for the purposes of the proposed law, an hourly rate, other than an hourly rate which is paid as a proportionate part of an annual rate, shall be multiplied by 2,080 to obtain an equivalent annual rate for the position; and a daily rate, other than a daily rate which is paid as a proportionate part of an annual rate, shall be multiplied by 260 to obtain an equivalent annual rate for the position.

Section 3 of the bill further provides that as used in the bill, the phrase "compensation from any office or position" shall be construed to include any basic salary, wages, or other emolument, including permanent additions such as statutory pay increases, but excluding any temporary additions such as overtime pay or night differential, for or on account of service as a civilian officer or employee of the United States, or any department or agency thereof, including Government-owned or controlled corporations, or of the government of the District of Columbia.

Section 3 of the bill also provides that the phrase "compensation from any office or position," as used in the bill, shall be construed to include retired pay on account of services as a commissioned officer in any of the services specified in the Pay Readjustment Act of 1942 (37 U. S. C. sec. 101 et. seq.), but that nothing in the bill shall be construed to apply to retired pay of enlisted men or warrant officers of such service retired for any cause, nor to retired pay of Regular, Reserve, or temporary commissioned officers retired for disability incurred in combat with an enemy of the United States or for disabilities resulting from an explosion of an instrumentality of war in line of duty during an enlistment or employment as provided in Veterans Regulation No. 1 (a), part 1, paragraph 1. In connection with this portion of section 3 of the bill, attention may also be called to section 212 of the act of June 30, 1933, as amended (5 U. S. C. sec. 59a), reading as follows:

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(a) After June 30, 1932, no person holding a civilian office or position, appointive or elective, under the United States Government or the municipal government of the District of Columbia or under any corporation, the majority of the stock of which is owned by the United States, shall be entitled, during the period of such incumbency, to retired pay from the United States for or on account of services as a commissioned officer in any of the services mentioned in title 37, at a rate in excess of an amount which when combined with the annual rate of compensation from such civilian office or position, makes the total rate from both sources more than $3,000; and when the retired pay amounts to or exceeds the rate of $3,000 per annum such person shall be entitled to the pay of the civilian office or position or the retired pay, whichever he may elect. As used in this section, the term "retired pay" shall be construed to include credits for all service that lawfully may enter into the computation thereof.

(b) This section shall not apply to any person whose retired pay, plus civilian pay, amounts to less than $3,000: *Provided*, That this section shall not apply to regular or emergency commissioned officers retired for disability incurred in combat with an enemy of the United States or for disabilities resulting from an explosion of an instrumentality of war in line of duty during an enlistment or employment as provided in Veterans Regulation Numbered 1 (a), part 1, paragraph 1.

It will be noted, therefore, that section 3 of the proposed bill, taken together with section 1, would substantially continue the policy of the present law, above quoted, with refinements, but would raise the ceiling from $2,500 to $3,000. The proposed bill also makes it clear that the prohibitions do not encompass the retired pay of enlisted men or warrant officers.

Section 4 of the proposed bill provides that the provisions of the bill may be suspended by order of the President during any period of national emergency when in his opinion the public interest would be served by making the services of Federal officers and employees available for additional duty.

Section 5 of the bill is the repealing provision heretofore mentioned. It also contains an enumeration of certain measures either to be amended or unaffected by the proposed bill.

Although the various Federal agencies were requested, at the time of the introduction of this bill, to submit reports, no reports have been received. However, the Civil Service Commission, in its request for the introduction of the bill, stated that the Bureau of the Budget has no objection to the proposed submission of this legislation for the consideration of the Congress.

AMENDMENTS

To correct a misspelled word, strike out "servic" line 19 of page 2, and insert in lieu thereof the word "service".

To correct a typographical error, strike out the figure "3", line 25 on page 2, and insert in lieu thereof the figure "37".

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